

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections under - 35 USC § 112 are withdrawn, in view of amendments

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 8,10,19,21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Now only IPM is permitted to kill, but the instant siloxanes are also ectoparasiticial..

Claim 12-15, 39-41 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over SINGER et al 4147800

Almost 100% lice are killed within 24 hours (column 3, lines 22-38) by applying isopropanol and 50% isopropyl (IPM) myristate (1:1 to 1-column 2, lines 60-63) or less (column 4, top; column 3, lines 32-35). IPM above, at 70%, with polysorbate and water carrier, killed 100% lice (column 4, lines 21-32). Table I shows 100% kill with 100% IPM. Examples are with human lice, obviously inclusive of all species. Note alcohol at 25% killed no lice (Table II); 40% killed only 7% (column 3, bottom).

NO OTHER AGENTS are needed, only IPM.

Claim 1-4, 32, 34-37, 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over SINGER

See above; Table I shows IPM alone kills 100% of lice, obvious to use prevent alcohol irritation (column 3, top) if subject is sensitive.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of the ectoparasitidal, pediculicide compositions to control lice, modified as desired to decrease toxicity to patients.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of the composition to optimize the effect desired, to optimize reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

Claims 12-15, 32, 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over SINGER et al 4147800 in view of REID et al 5972987

SINGER (above) kills lice, but does not mention combing.

REID shows application of pediculicide and dye (column 4, lines 6-11) permit removal with combs (column 4, lines 50-56) from human or animal (lines 63-66) particularly head lice (column 5, lines 44-48). Example 1 shows use of silicone and IPM.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of the pediculicide compositions of SINGER to control lice, modified as desired to decrease toxicity to patients. Motivation to combine springs from the IPM synergy of SINGER, with further removal of lice and nits facilitated by dye and comb of REID.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of the composition to optimize the effect desired, to optimize reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or the manner of treating lice, combing, shampooing, rinsing, or ingredient concentrations provides any

greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability

Response to Arguments

Applicant's arguments filed 2/5/2010 have been fully considered but they are not persuasive. Applicant argues that only IPM kills now; but in fact SINGER shows only IPM kills. IT'S NOT the preferred or synergistic formulation, but it meets the instant claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A. WAX can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/
Primary Examiner, Art Unit 1615 4/9/2010